

**ASSEMBLY BILL**

**No. 1838**

**Introduced by Assembly Member Hertzberg**

January 24, 2002

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An act to amend Sections 189, 667.5, 1192.7, 11417, 11418, 11418.5, and 11419 of, and to add Section 11418.1 to, the Penal Code, relating to weapons of mass destruction, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1838, as introduced, Hertzberg. Weapons of mass destruction.

Existing law, as amended by initiative statute, specifies those acts that constitute first degree murder. The initiative statute provides that any amendment of its provisions by the Legislature shall require a  $\frac{2}{3}$  vote of the membership of each house.

This bill would add to those acts, murder perpetrated by means of a weapon of mass destruction.

By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

Existing law provides for a list of crimes called “serious felonies” and “violent felonies.” Existing law provides specified enhancements to the punishments of certain repeat, state prison bound offenders with prior violent or serious felony convictions. Existing law provides for the possibility of a reduction of time served on a sentence for work performance, but limits the sentence reduction available to 15%, rather than the usual 50% for prison, or 33% for county Jail, if a defendant is committed on charges that include one or more violent or serious felonies. Proposition 21, in initiative statute, provides that any

amendment of these provisions by the Legislature shall require a  $\frac{2}{3}$  vote of the membership of each house.

This bill would add to the list of violent felonies specified offenses perpetrated by means of a weapon of mass destruction, as specified.

This bill would also add to the list of serious felonies specified violations perpetrated with weapons of mass destruction, as defined, and any conspiracy to commit any serious felony.

Existing law defines “weapon of mass destruction.” Existing law also provides that, absent lawful authority, the possession, development, manufacture, production, transfer, acquisition, or retention of any weapon of mass destruction is a felony.

This bill would expand that definition to include restricted biological agents, and an aircraft, vessel, or vehicle that is used as a destructive device. This bill would also define “used as a destructive weapon” for purposes of those provisions.

By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

Existing law provides that, absent lawful authority, the possession, development, manufacture, production, transfer, acquisition, or retention of any weapon of mass destruction is a felony.

This bill would, in addition, provide that a person who employs, as specified, a weapon of mass destruction in a form that causes widespread great bodily injury or death would be punishable by imprisonment in the state prison for life without the possibility of parole.

By creating a new crime, this bill would impose a state-mandated local program.

Existing law provides that a threat, as specified, to use a weapon of mass destruction is a crime.

This bill would, in addition, provide that giving, mailing, sending, or causing to be sent a false or facsimile weapon of mass destruction, as specified, would be punishable by imprisonment in a county jail not exceeding one year, or imprisonment in the state prison for 3, 4, or 6 years and a fine not exceeding \$250,000.

By creating a new crime, this bill would impose a state-mandated local program.

Existing law provides that a threat, as specified, to use a weapon of mass destruction, that results in “sustained fear,” as defined, is a crime.

This bill would, in addition, expand the definition evidence showing “sustained fear” to include any isolation, quarantine, or



decontamination effort. By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

Existing law provides that possession of a restricted biological agent, as defined, is punishable by imprisonment in the state prison for 4, 8, or 12 years, or a fine not exceeding \$250,000, or by both imprisonment and the fine.

This bill would revise the penalties to provide that the offense would be punishable by both the prison term and the fine. The bill would also expand the list of restricted biological agents to include bioengineered products, as specified.

By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

Because this bill would amend initiative statutes, it would require a  $\frac{2}{3}$  vote of the membership of each house of the Legislature for enactment by the Legislature under the terms of the initiative statutes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 189 of the Penal Code is amended to  
2 read:

3 189. All murder which is perpetrated by means of a  
4 destructive device or explosive, *a weapon of mass destruction*,  
5 knowing use of ammunition designed primarily to penetrate metal  
6 or armor, poison, lying in wait, torture, or by any other kind of  
7 willful, deliberate, and premeditated killing, or which is  
8 committed in the perpetration of, or attempt to perpetrate, arson,  
9 rape, carjacking, robbery, burglary, mayhem, kidnapping, train  
10 wrecking, or any act punishable under Section 206, 286, 288,  
11 288a, or 289, or any murder which is perpetrated by means of  
12 discharging a firearm from a motor vehicle, intentionally at



1 another person outside of the vehicle with the intent to inflict  
2 death, is murder of the first degree. All other kinds of murders are  
3 of the second degree.

4 As used in this section, “destructive device” means any  
5 destructive device as defined in Section 12301, and “explosive”  
6 means any explosive as defined in Section 12000 of the Health and  
7 Safety Code.

8 *As used in this section, “weapon of mass destruction” means*  
9 *any item defined in Section 11417.*

10 To prove the killing was “deliberate and premeditated,” it shall  
11 not be necessary to prove the defendant maturely and  
12 meaningfully reflected upon the gravity of his or her act.

13 SEC. 2. Section 667.5 of the Penal Code is amended to read:  
14 667.5. Enhancement of prison terms for new offenses because  
15 of prior prison terms shall be imposed as follows:

16 (a) Where one of the new offenses is one of the violent felonies  
17 specified in subdivision (c), in addition to and consecutive to any  
18 other prison terms therefor, the court shall impose a three-year  
19 term for each prior separate prison term served by the defendant  
20 where the prior offense was one of the violent felonies specified  
21 in subdivision (c). However, no additional term shall be imposed  
22 under this subdivision for any prison term served prior to a period  
23 of 10 years in which the defendant remained free of both prison  
24 custody and the commission of an offense which results in a felony  
25 conviction.

26 (b) Except where subdivision (a) applies, where the new  
27 offense is any felony for which a prison sentence is imposed, in  
28 addition and consecutive to any other prison terms therefor, the  
29 court shall impose a one-year term for each prior separate prison  
30 term served for any felony; provided that no additional term shall  
31 be imposed under this subdivision for any prison term served prior  
32 to a period of five years in which the defendant remained free of  
33 both prison custody and the commission of an offense which  
34 results in a felony conviction.

35 (c) For the purpose of this section, “violent felony” shall mean  
36 any of the following:

- 37 (1) Murder or voluntary manslaughter.  
38 (2) Mayhem.



1 (3) Rape as defined in paragraph (2) or (6) of subdivision (a)  
2 of Section 261 or paragraph (1) or (4) of subdivision (a) of Section  
3 262.

4 (4) Sodomy by force, violence, duress, menace, or fear of  
5 immediate and unlawful bodily injury on the victim or another  
6 person.

7 (5) Oral copulation by force, violence, duress, menace, or fear  
8 of immediate and unlawful bodily injury on the victim or another  
9 person.

10 (6) Lewd acts on a child under the age of 14 years as defined  
11 in Section 288.

12 (7) Any felony punishable by death or imprisonment in the  
13 state prison for life.

14 (8) Any felony in which the defendant inflicts great bodily  
15 injury on any person other than an accomplice which has been  
16 charged and proved as provided for in Section 12022.7 or 12022.9  
17 on or after July 1, 1977, or as specified prior to July 1, 1977, in  
18 Sections 213, 264, and 461, or any felony in which the defendant  
19 uses a firearm which use has been charged and proved as provided  
20 in Section 12022.5, or 12022.55.

21 (9) Any robbery.

22 (10) Arson, in violation of subdivision (a) or (b) of Section 451.

23 (11) The offense defined in subdivision (a) of Section 289  
24 where the act is accomplished against the victim's will by force,  
25 violence, duress, menace, or fear of immediate and unlawful  
26 bodily injury on the victim or another person.

27 (12) Attempted murder.

28 (13) A violation of Section 12308, 12309, or 12310.

29 (14) Kidnapping.

30 (15) Assault with the intent to commit mayhem, rape, sodomy,  
31 or oral copulation, in violation of Section 220.

32 (16) Continuous sexual abuse of a child, in violation of Section  
33 288.5.

34 (17) Carjacking, as defined in subdivision (a) of Section 215.

35 (18) A violation of Section 264.1.

36 (19) Extortion, as defined in Section 518, which would  
37 constitute a felony violation of Section 186.22 of the Penal Code.

38 (20) Threats to victims or witnesses, as defined in Section  
39 136.1, which would constitute a felony violation of Section 186.22  
40 of the Penal Code.

(21) Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.

(22) Any violation of Section 12022.53.

(23) *A violation of subdivision (b) or (c) of Section 11418.*

The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence to display society's condemnation for these extraordinary crimes of violence against the person.

(d) For the purposes of this section, the defendant shall be deemed to remain in prison custody for an offense until the official discharge from custody or until release on parole, whichever first occurs, including any time during which the defendant remains subject to reimprisonment for escape from custody or is reimprisoned on revocation of parole. The additional penalties provided for prior prison terms shall not be imposed unless they are charged and admitted or found true in the action for the new offense.

(e) The additional penalties provided for prior prison terms shall not be imposed for any felony for which the defendant did not serve a prior separate term in state prison.

(f) A prior conviction of a felony shall include a conviction in another jurisdiction for an offense which, if committed in California, is punishable by imprisonment in the state prison if the defendant served one year or more in prison for the offense in the other jurisdiction. A prior conviction of a particular felony shall include a conviction in another jurisdiction for an offense which includes all of the elements of the particular felony as defined under California law if the defendant served one year or more in prison for the offense in the other jurisdiction.

(g) A prior separate prison term for the purposes of this section shall mean a continuous completed period of prison incarceration imposed for the particular offense alone or in combination with concurrent or consecutive sentences for other crimes, including any reimprisonment on revocation of parole which is not accompanied by a new commitment to prison, and including any reimprisonment after an escape from incarceration.

(h) Serving a prison term includes any confinement time in any state prison or federal penal institution as punishment for

1 commission of an offense, including confinement in a hospital or  
2 other institution or facility credited as service of prison time in the  
3 jurisdiction of the confinement.

4 (i) For the purposes of this section, a commitment to the State  
5 Department of Mental Health as a mentally disordered sex  
6 offender following a conviction of a felony, which commitment  
7 exceeds one year in duration, shall be deemed a prior prison term.

8 (j) For the purposes of this section, when a person subject to the  
9 custody, control, and discipline of the Director of Corrections is  
10 incarcerated at a facility operated by the Department of the Youth  
11 Authority, that incarceration shall be deemed to be a term served  
12 in state prison.

13 (k) Notwithstanding subdivisions (d) and (g) or any other  
14 provision of law, where one of the new offenses is committed  
15 while the defendant is temporarily removed from prison pursuant  
16 to Section 2690 or while the defendant is transferred to a  
17 community facility pursuant to Section 3416, 6253, or 6263, or  
18 while the defendant is on furlough pursuant to Section 6254, the  
19 defendant shall be subject to the full enhancements provided for  
20 in this section.

21 This subdivision shall not apply when a full, separate, and  
22 consecutive term is imposed pursuant to any other provision of  
23 law.

24 SEC. 3. Section 1192.7 of the Penal Code is amended to read:

25 1192.7. (a) Plea bargaining in any case in which the  
26 indictment or information charges any serious felony, any felony  
27 in which it is alleged that a firearm was personally used by the  
28 defendant, or any offense of driving while under the influence of  
29 alcohol, drugs, narcotics, or any other intoxicating substance, or  
30 any combination thereof, is prohibited, unless there is insufficient  
31 evidence to prove the people's case, or testimony of a material  
32 witness cannot be obtained, or a reduction or dismissal would not  
33 result in a substantial change in sentence.

34 (b) As used in this section "plea bargaining" means any  
35 bargaining, negotiation, or discussion between a criminal  
36 defendant, or his or her counsel, and a prosecuting attorney or  
37 judge, whereby the defendant agrees to plead guilty or nolo  
38 contendere, in exchange for any promises, commitments,  
39 concessions, assurances, or consideration by the prosecuting



1 attorney or judge relating to any charge against the defendant or  
2 to the sentencing of the defendant.

3 (c) As used in this section, “serious felony” means any of the  
4 following:

5 (1) Murder or voluntary manslaughter; (2) mayhem; (3) rape;  
6 (4) sodomy by force, violence, duress, menace, threat of great  
7 bodily injury, or fear of immediate and unlawful bodily injury on  
8 the victim or another person; (5) oral copulation by force,  
9 violence, duress, menace, threat of great bodily injury, or fear of  
10 immediate and unlawful bodily injury on the victim or another  
11 person; (6) lewd or lascivious act on a child under the age of 14  
12 years; (7) any felony punishable by death or imprisonment in the  
13 state prison for life; (8) any felony in which the defendant  
14 personally inflicts great bodily injury on any person, other than an  
15 accomplice, or any felony in which the defendant personally uses  
16 a firearm; (9) attempted murder; (10) assault with intent to commit  
17 rape or robbery; (11) assault with a deadly weapon or instrument  
18 on a peace officer; (12) assault by a life prisoner on a noninmate;  
19 (13) assault with a deadly weapon by an inmate; (14) arson; (15)  
20 exploding a destructive device or any explosive with intent to  
21 injure; (16) exploding a destructive device or any explosive  
22 causing bodily injury, great bodily injury, or mayhem; (17)  
23 exploding a destructive device or any explosive with intent to  
24 murder; (18) any burglary of the first degree; (19) robbery or bank  
25 robbery; (20) kidnapping; (21) holding of a hostage by a person  
26 confined in a state prison; (22) attempt to commit a felony  
27 punishable by death or imprisonment in the state prison for life;  
28 (23) any felony in which the defendant personally used a  
29 dangerous or deadly weapon; (24) selling, furnishing,  
30 administering, giving, or offering to sell, furnish, administer, or  
31 give to a minor any heroin, cocaine, phencyclidine (PCP), or any  
32 methamphetamine-related drug, as described in paragraph (2) of  
33 subdivision (d) of Section 11055 of the Health and Safety Code,  
34 or any of the precursors of methamphetamines, as described in  
35 subparagraph (A) of paragraph (1) of subdivision (f) of Section  
36 11055 or subdivision (a) of Section 11100 of the Health and Safety  
37 Code; (25) any violation of subdivision (a) of Section 289 where  
38 the act is accomplished against the victim’s will by force, violence,  
39 duress, menace, or fear of immediate and unlawful bodily injury  
40 on the victim or another person; (26) grand theft involving a





1 firearm; (27) carjacking; (28) any felony offense, which would  
 2 also constitute a felony violation of Section 186.22; (29) assault  
 3 with the intent to commit mayhem, rape, sodomy, or oral  
 4 copulation, in violation of Section 220; (30) throwing acid or  
 5 flammable substances, in violation of Section 244; (31) assault  
 6 with a deadly weapon, firearm, machinegun, assault weapon, or  
 7 semiautomatic firearm or assault on a peace officer or firefighter,  
 8 in violation of Section 245; (32) assault with a deadly weapon  
 9 against a public transit employee, custodial officer, or school  
 10 employee, in violation of Sections 245.2, 245.3, or 245.5; (33)  
 11 discharge of a firearm at an inhabited dwelling, vehicle, or aircraft,  
 12 in violation of Section 246; (34) commission of rape or *sexual*  
 13 ~~penetration by a foreign object~~ in concert with another person, in  
 14 violation of Section 264.1; (35) continuous sexual abuse of a child,  
 15 in violation of Section 288.5; (36) shooting from a vehicle, in  
 16 violation of subdivision (c) or (d) of Section 12034; (37)  
 17 intimidation of victims or witnesses, in violation of Section 136.1;  
 18 (38) ~~terrorist~~ criminal threats, in violation of Section 422; (39) any  
 19 attempt to commit a crime listed in this subdivision other than an  
 20 assault; (40) any violation of Section 12022.53; ~~and (41) any~~  
 21 ~~conspiracy to commit an offense described in this subdivision (41)~~  
 22 *a violation of subdivision (b) or (c) of Section 11418; and (42) any*  
 23 *conspiracy to commit an offense described in this subdivision.*

24 (d) As used in this section, “bank robbery” means to take or  
 25 attempt to take, by force or violence, or by intimidation from the  
 26 person or presence of another any property or money or any other  
 27 thing of value belonging to, or in the care, custody, control,  
 28 management, or possession of, any bank, credit union, or any  
 29 savings and loan association.

30 As used in this subdivision, the following terms have the  
 31 following meanings:

32 (1) “Bank” means any member of the Federal Reserve System,  
 33 and any bank, banking association, trust company, savings bank,  
 34 or other banking institution organized or operating under the laws  
 35 of the United States, and any bank the deposits of which are  
 36 insured by the Federal Deposit Insurance Corporation.

37 (2) “Savings and loan association” means any federal savings  
 38 and loan association and any “insured institution” as defined in  
 39 Section 401 of the National Housing Act, as amended, and any

1 federal credit union as defined in Section 2 of the Federal Credit  
2 Union Act.

3 (3) “Credit union” means any federal credit union and any  
4 state-chartered credit union the accounts of which are insured by  
5 the Administrator of the National Credit Union administration.

6 (e) The provisions of this section shall not be amended by the  
7 Legislature except by statute passed in each house by rollcall vote  
8 entered in the journal, two-thirds of the membership concurring,  
9 or by a statute that becomes effective only when approved by the  
10 electors.

11 SEC. 4. Section 11417 of the Penal Code is amended to read:

12 11417. (a) For the purposes of this article, the following  
13 terms have the following meanings:

14 (1) “Weapon of mass destruction” includes chemical warfare  
15 agents, weaponized biological or biologic warfare agents,  
16 *restricted biological agents*, nuclear agents, radiological agents, or  
17 the intentional release of industrial agents as a weapon, *or an*  
18 *aircraft, vessel, or vehicle which is used as a destructive weapon.*

19 (2) “Chemical Warfare Agents” includes, but is not limited to,  
20 the following weaponized agents, or any analog of these agents:

21 (A) Nerve agents, including Tabun (GA), Sarin (GB), Soman  
22 (GD), GF, and VX.

23 (B) Choking agents, including Phosgene (CG) and Diphosgene  
24 (DP).

25 (C) Blood agents, including Hydrogen Cyanide (AC),  
26 Cyanogen Chloride (CK), and Arsine (SA).

27 (D) Blister agents, including mustards (H, HD [sulfur  
28 mustard], HN-1, HN-2, HN-3 [nitrogen mustard]), arsenicals,  
29 such as Lewisite (L), urticants, such as CX; and incapacitating  
30 agents, such as BZ.

31 (3) “Weaponized biological or biologic warfare agents”  
32 include weaponized pathogens, such as bacteria, viruses,  
33 rickettsia, yeasts, fungi, or genetically engineered pathogens,  
34 toxins, vectors, and endogenous biological regulators (EBRs).

35 (4) “Nuclear or radiological agents” includes any improvised  
36 nuclear device (IND) which is any explosive device designed to  
37 cause a nuclear yield; any radiological dispersal device (RDD)  
38 which is any explosive device utilized to spread radioactive  
39 material; or a simple radiological dispersal device (SRDD) which



1 is any act or container designed to release radiological material as  
2 a weapon without an explosion.

3 (5) “Vector” means a living organism or a molecule, including  
4 a recombinant molecule, or a biological product that may be  
5 engineered as a result of biotechnology, that is capable of carrying  
6 a biological agent or toxin to a host.

7 (6) “Weaponization” is the deliberate processing, preparation,  
8 packaging, or synthesis of any substance for use as a weapon or  
9 munition. “Weaponized agents” are those agents or substances  
10 prepared for dissemination through any explosive, thermal,  
11 pneumatic, or mechanical means.

12 (7) *For purposes of this section, “used as a destructive*  
13 *weapon” means to use with the intent of causing a fire or*  
14 *explosion, a release of chemical, biological, or radioactive*  
15 *substance or death of or injury to one or more human beings.*

16 (b) The intentional release of a dangerous chemical or  
17 hazardous material generally utilized in an industrial or  
18 commercial process shall be considered use of a weapon of mass  
19 destruction when a person knowingly utilizes those agents with the  
20 intent to cause harm and the use places persons or animals at risk  
21 of serious injury, illness, or death, or endangers the environment.

22 (c) The lawful use of chemicals for legitimate mineral  
23 extraction, industrial, agricultural, or commercial purposes is not  
24 proscribed by this article.

25 (d) No university, research institution, private company,  
26 individual, or hospital engaged in scientific or public health  
27 research and, as required, registered with the Centers for Disease  
28 Control and Prevention (CDC) pursuant to Part 113 (commencing  
29 with Section 113.1) of Subchapter E of Chapter 1 of Title 9 or  
30 pursuant to Part 72 (commencing with Section 72.1) of Subchapter  
31 E of Chapter 1 of Title 42 of the Code of Federal Regulations, or  
32 any successor provisions, shall be subject to this article.

33 SEC. 5. Section 11418 of the Penal Code is amended to read:

34 11418. (a) (1) Any person, without lawful authority, who  
35 possesses, develops, manufactures, produces, transfers, acquires,  
36 or retains any weapon of mass destruction, shall be punished by  
37 imprisonment in the state prison for ~~3, 6, or 9~~ 4, 8, or 12 years.

38 (2) Any person who commits a violation of paragraph (1) and  
39 who has been previously convicted of Section 11411, 11412,  
40 11413, 11418, 11418.1, 11418.5, 11419, 11460, 12303.1, 12303.2,

1 or 12303.3 shall be punished by imprisonment in the state prison  
2 for ~~4, 8, or 12~~ 5, 10, or 15 years.

3 (b) (1) Any person who uses or directly employs against  
4 another person a weapon of mass destruction in a form that may  
5 cause widespread, disabling illness, or injury in human beings  
6 shall be punished by imprisonment in the state prison for life.

7 (2) *Any person who uses or directly employs against another*  
8 *person a weapon of mass destruction in a form that causes*  
9 *widespread great bodily injury or death shall be punished by*  
10 *imprisonment in the state prison for life without the possibility of*  
11 *parole. Nothing in this paragraph shall prevent punishment*  
12 *instead under Section 190.2.*

13 (3) Any person who uses a weapon of mass destruction in a  
14 form that may cause widespread damage to and disruption of the  
15 ~~water or food supply or “source of drinking water” as defined in~~  
16 ~~subdivision (d) of Section 25249.11 of the Health and Safety Code~~  
17 shall be punished by imprisonment in the state prison for ~~4, 8, or~~  
18 ~~12 years, and by a fine of not more than one hundred thousand~~  
19 ~~dollars (\$100,000) life.~~

20 ~~(3)~~

21 (4) Any person who maliciously uses against animals or crops  
22 a weapon of mass destruction in a form that may cause widespread  
23 damage to and substantial diminution in the value of stock animals  
24 or crops shall be punished by ~~a fine of not more than one hundred~~  
25 ~~thousand dollars (\$100,000), or by imprisonment in the state~~  
26 ~~prison for 4, 8, or 12 years, or by both that fine and imprisonment~~  
27 ~~and by a fine of not more than one hundred thousand dollars~~  
28 ~~(\$100,000).~~

29 (c) Any person who uses a weapon of mass destruction in a  
30 form that may cause widespread and significant damage to public  
31 natural resources, including coastal waterways and beaches,  
32 public parkland, surface waters, ground water, and wildlife, shall  
33 be punished by imprisonment in the state prison for 3, 4, or 6 years.

34 (d) Any person who uses recombinant technology or any other  
35 biological advance to create new pathogens or more virulent forms  
36 of existing pathogens for the purposes specified in this section,  
37 shall be punished by imprisonment ~~in a county jail for up to one~~  
38 ~~year or in the state prison for 3, 6, or 9~~ 4, 8, or 12 years, ~~or and by~~  
39 a fine of not more than two hundred fifty thousand dollars  
40 (\$250,000), ~~or by both that fine and imprisonment.~~

(e) Nothing in this section shall be construed to prevent punishment instead pursuant to any other provision of law that imposes a greater or more severe punishment.

SEC. 6. Section 11418.1 is added to the Penal Code, to read:

11418.1. Any person who gives, mails, sends, or causes to be sent any false or facsimile of a weapon of mass destruction to another person, or places, causes to be placed, or possesses any false or facsimile of a weapon of mass destruction, with the intent to cause another person to fear for his or her own safety, or for the personal safety of others, shall be punished by imprisonment in a county jail for not more than one year or in the state prison for three, four, or six years and by a fine of not more than two hundred fifty thousand dollars (\$250,000).

SEC. 7. Section 11418.5 of the Penal Code is amended to read:

11418.5. (a) Any person who knowingly threatens to use a weapon of mass destruction, with the specific intent that the statement, ~~made verbally, in writing, as defined in Section 225 of the Evidence Code~~ or a statement made by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety, or for his or her immediate family's safety, ~~which results in an isolation, quarantine, or decontamination effort,~~ shall be punished by imprisonment in a county jail for up to one year or in the state prison for 3, 4, or 6 years, ~~or by~~ and a fine of not more than two hundred fifty thousand dollars (\$250,000), ~~or by both that fine and imprisonment.~~

(b) For the purposes of this section, "sustained fear" can be established by, but is not limited to, conduct such as evacuation of any building by any occupant, evacuation of any school by any employee or student, evacuation of any home by any resident or occupant, *any isolation, quarantine, or decontamination effort*, or any other action taken in direct response to the threat to use a weapon of mass destruction.

(c) The fact that the person who allegedly violated this section did not actually possess a biological agent, toxin, or chemical

1 weapon does not constitute a defense to the crime specified in this  
2 section.

3 (d) Nothing in this section shall be construed to prevent  
4 punishment instead pursuant to any other provision of law that  
5 imposes a greater or more severe punishment.

6 SEC. 8. Section 11419 of the Penal Code is amended to read:

7 11419. (a) Any person or entity possessing any of the  
8 restricted biological agents enumerated in subdivision (b) shall be  
9 punished by ~~a fine of not more than two hundred fifty thousand~~  
10 ~~dollars (\$250,000), imprisonment in the state prison for 4, 8, or 12~~  
11 ~~years, or by both that fine and imprisonment and a fine of not more~~  
12 ~~than two hundred fifty thousand dollars (\$250,000).~~

13 (b) For the purposes of this section, “restricted biological  
14 agents” means the following:

15 (1) Viruses: Crimean-Congo hemorrhagic fever virus, eastern  
16 equine encephalitis virus, ebola viruses, equine morbilli virus,  
17 lassa fever virus, marburg virus, Rift Valley fever virus, South  
18 African hemorrhagic fever viruses (Junin, Machupo, Sabia,  
19 Flexal, Guanarito), tick-borne encephalitis complex viruses,  
20 variola major virus (smallpox virus), Venezuelan equine  
21 encephalitis virus, viruses causing hantavirus pulmonary  
22 syndrome, yellow fever virus.

23 (2) Bacteria: bacillus anthracis (commonly known as anthrax),  
24 brucella abortus, brucella melitensis, brucella suis, burkholderia  
25 (pseudomonas) mallei, burkholderia (pseudomonas)  
26 pseudomallei, clostridium botulinum, francisella tularensis,  
27 yersinia pestis (commonly known as plague).

28 (3) Rickettsiae: coxiella burnetii, rickettsia prowazekii,  
29 rickettsia rickettsii.

30 (4) Fungi: coccidioides immitis.

31 (5) Toxins: abrin, aflatoxins, botulinum toxins, clostridium  
32 perfringens epsilon toxin, conotoxins, diacetoxyscirpenol, ricin,  
33 saxitoxin, shigatoxin, staphylococcal enterotoxins, tetrodotoxin,  
34 T-2 toxin.

35 (6) *Any other microorganism, virus, infectious substance, or*  
36 *biological product that may be engineered as a result of*  
37 *biotechnology, or any naturally occurring or bioengineered*  
38 *component of any microorganisms, viruses, infectious substances,*  
39 *or biological products capable of causing any of the following:*



1 (A) *Death, disease, or other biological malfunction in a*  
2 *human, an animal, a plant, or a living organism.*

3 (B) *Deterioration of food, water, equipment, supplies, or*  
4 *material of any kind.*

5 (C) *Deleterious alteration of the environment.*

6 (c) (1) This section shall not apply to any physician,  
7 veterinarian, pharmacist, or licensed medical practitioner  
8 authorized to dispense a prescription under Section 11026 of the  
9 Health and Safety Code, or universities, research institutions, or  
10 pharmaceutical corporations, or any person possessing the agents  
11 pursuant to a lawful prescription issued by a person defined in  
12 Section 11026 of the Health and Safety Code, if the person  
13 possesses vaccine strains of the viral agents Junin virus strain #1,  
14 Rift Valley fever virus strain MP-12, Venezuelan equine  
15 encephalitis virus strain TC-83 and yellow fever virus strain 17-D;  
16 any vaccine strain described in Section 78.1 of Subpart A of Part  
17 78 of Subchapter C of Chapter 1 of Title 9 of the Code of Federal  
18 Regulations, or any successor provisions, and any toxin for  
19 medical use, inactivated for use as vaccines, or toxin preparation  
20 for biomedical research use at a median lethal dose for vertebrates  
21 of more than 100 ng/kg, as well as any national standard toxin  
22 required for biologic potency testing as described in Part 113  
23 (commencing with Section 113.1) of Subchapter E of Chapter 1 of  
24 Title 9 of the Code of Federal Regulations, or any successor  
25 provisions.

26 (2) For the purposes of this section, no person shall be deemed  
27 to be in possession of an agent if the person is naturally exposed  
28 to, or innocently infected or contaminated with, the agent.

29 (d) Any peace officer who encounters any of the restricted  
30 agents mentioned above shall immediately notify and consult with  
31 a local public health officer to ensure proper consideration of any  
32 public health risk.

33 (e) Nothing in this section shall be construed to prevent  
34 punishment instead pursuant to any other provision of law that  
35 imposes a greater or more severe punishment.

36 SEC. 9. No reimbursement is required by this act pursuant to  
37 Section 6 of Article XIII B of the California Constitution because  
38 the only costs that may be incurred by a local agency or school  
39 district will be incurred because this act creates a new crime or  
40 infraction, eliminates a crime or infraction, or changes the penalty



1 for a crime or infraction, within the meaning of Section 17556 of  
2 the Government Code, or changes the definition of a crime within  
3 the meaning of Section 6 of Article XIII B of the California  
4 Constitution.

5 SEC. 10. This act is an urgency statute necessary for the  
6 immediate preservation of the public peace, health, or safety  
7 within the meaning of Article IV of the Constitution and shall go  
8 into immediate effect. The facts constituting the necessity are:

9 In order to provide for immediate authority to effectively  
10 address the use or threatened use of weapons of mass destruction  
11 in California, it is necessary that this act take effect immediately.

